

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Adoption of its 2004 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement, for Review of Contract Administration, Least Cost Dispatch and Procurement Activities during the Record Period January 1, 2003, Through May 31, 2003, and for Approval of its 2004 Ongoing Competition Transition Charges (CTC) Revenue Requirement and Proposed Rate Design.

(U 39 E)

Application 03-08-004  
(Filed August 1, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING MOTIONS  
FOR PROTECTIVE ORDER AND TO FILE UNDER SEAL**

**Summary**

On August 1, 2003, Pacific Gas and Electric Company (PG&E) filed its application for the adoption of its 2004 Energy Resource Recovery Account (ERRA) revenue requirement forecast, for review of its contract administration, least cost dispatch and procurement activities for the record period January 1, 2003, through May 31, 2003, and for approval of its proposed 2004 rates for ongoing Competition Transition Charges (CTC). Concurrent with the filing of its application, PG&E filed a motion for a protective order, and a motion "for authority to file and maintain confidential, commercially sensitive, proprietary information under seal."

As a result of Decision (D.) 03-12-062 in the generation procurement rulemaking (R.01-10-024), PG&E was directed to update its short-term procurement plan “to reflect more recent fuel price forecasts and resulting changes to the loads/resource capacity and energy balance tables and residual net open estimates.” (D.03-12-062, Ordering Par. 12, p. 92.) PG&E filed its update on January 20, 2004 in Advice Letter 2464-E. On February 17, 2004, PG&E filed an amendment to the pending application, along with updated redacted and unredacted testimony. The amendment and revised testimony updates PG&E’s 2004 ERRR revenue requirement and the 2004 CTC revenue requirement. PG&E also filed a second motion for authority to file certain information under seal.

Today’s ruling grants both of PG&E’s motion to file certain information under seal. This ruling also grants PG&E’s motion for a protective order, as revised by the changes that are reflected in the protective order attached to this ruling as Attachment A. Attachment A is adopted as the protective order that shall apply in this proceeding.

### **Background**

PG&E’s ERRR application was submitted for filing in response to the Commission’s directives in D.02-10-062 and D.02-12-074. An unredacted version of PG&E’s testimony in support of the 2004 ERRR and the review of its procurement activities was submitted to the Docket Office for filing under seal, accompanied by PG&E’s motion to keep this information under seal. PG&E’s motion states that the unredacted testimony contains “commercially sensitive, confidential and proprietary information on PG&E’s electric energy resources and PG&E’s plans throughout the test period for managing its power resources to meet customer needs on a least cost basis.” (PG&E’s August 1, 2003 Motion To File Under Seal, p. 1.) PG&E seeks to protect this information by having the

assigned Administrative Law Judge (ALJ) grant its motion to keep the information under seal.

In addition to PG&E's February 17, 2004 amendment to its application, PG&E submitted redacted and unredacted updates to Volume I of its prepared testimony. PG&E's February 17, 2004 motion seeks authority to file the updated unredacted version under seal due to "commercially sensitive, confidential and proprietary information on PG&E's electric energy resources and related matters." (PG&E's February 17, 2004 Motion To File Under Seal, p. 2.)

PG&E's August 1, 2003 motion for a protective order seeks to set forth the conditions under which non-market participants to the proceeding may obtain access to "a) confidential, market-sensitive, proprietary procurement information, and b) computer models, databases, programs and input data set formats PG&E used in support of testimony filed in this application." (PG&E's August 1, 2003 Motion for Protective Order, p. 1.) A proposed protective order, with three appendices, was attached to the motion for a protective order.

### **Motions to File Certain Information Under Seal**

PG&E's unredacted testimony in support of the ERRA application, and the updated unredacted testimony, contain numerous references to information which PG&E believes is commercially sensitive, confidential, and proprietary. PG&E asserts that these references provide information about the "use of utility retained generation resources, energy under PG&E contracts, Department of Water Resources contracts allocated to PG&E, management of surplus energy, acquisition of power to meet the residual net short, and hedging...." PG&E further states that maintaining "the confidentiality of this information is critical to protecting PG&E's ability to function effectively in the energy markets ...," and if "this information were to fall into other market participants' hands, it could and would be used to take advantage of PG&E as it seeks to secure and execute

transactions to acquire energy products, dispose of long positions, and achieve least cost management of PG&E's electric energy portfolio in 2004 and beyond." (PG&E's August 1, 2003 Motion To File Under Seal, p. 2; PG&E's February 17, 2004 Motion To File Under Seal, p. 2.)

No one filed any response to PG&E's August 1, 2003 motion to file under seal. Although the time for filing a response to PG&E's February 17, 2004 motion has not yet passed, a ruling on the motion may occur before any response is filed. (Commission's Rules of Practice and Procedure, Rule 45(h).)

The unredacted testimony in support of the application, and the updated unredacted testimony, both of which PG&E seeks to keep under seal, have been compared to the redacted versions. We have reviewed the information, and balanced the need for protecting the redacted information with the public's interest in this information. The unredacted information, if disclosed, could provide a market participant with an advantage in its business dealings with PG&E. The same kind of information was protected from disclosure in PG&E's 2003 ERRA proceeding (A.03-02-002). Accordingly, the unredacted testimony, and the updated unredacted testimony, in support of PG&E's 2004 ERRA application and its procurement activities from January 1, 2003, through May 31, 2003, should remain sealed, and PG&E's August 1, 2003 and February 17, 2004 motions to file the unredacted testimony under seal should be granted.

We note, however, that the Commission is reconsidering the type of information that should be made available to the public. Recently in D.04-01-050, the Commission stated that it was "Our intent ... to broaden the scope of information embedded in utility resource plans that can be made public." (D.04-01-050, p. 178.) D.04-01-050 pointed out that the 2003 Integrated Resource Plan of PacifiCorp provided considerable load and resource information in its plan, and that the Commission should re-examine the confidentiality guidelines

“with a view towards making far more information public in the next round of long-term procurement plan filings.” (D.04-01-050, p. 178.) The Commission suggested using the PacifiCorp plan as a “possible model of transparency in resource planning” and invited parties to comment on whether the Commission should require PG&E and other utilities to make the same kind of planning data available to the public. Thus, although today’s ruling grants both of PG&E’s motions to file certain information under seal, PG&E and interested parties should be aware that future motions to file certain information under seal are likely to face a tougher hurdle.

### **Motion for A Protective Order**

Pursuant to Pub. Util. Code §§ 454.5(g) and 583, PG&E seeks the issuance of a protective order that sets forth the conditions under which non-market participants to this proceeding may obtain access to (a) confidential, market-sensitive, proprietary procurement information, and (b) computer models, databases, programs and input data set formats that PG&E used in its testimony in support of the application. PG&E points out that similar protective orders were issued in R.01-10-024, and in A.03-02-002. A proposed protective order, with three appendices, was attached to PG&E’s motion. No one filed any comments on PG&E’s motion for a protective order.

The protective order that PG&E submitted in A.03-02-002 was patterned after the May 1, 2002 protective order that was adopted in R.01-10-024. (See A.03-02-002, April 16, 2003 ALJ Ruling.) However, that May 1, 2002 protective order was subsequently modified by the April 4, 2003 ruling in R.01-10-024.<sup>1</sup> The

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<sup>1</sup> The April 4, 2003 ruling directed the utilities to prepare “a final version of the modified Protective Order consistent with this Ruling.” The utilities filed the modified

*Footnote continued on next page*

April 4, 2003 ruling modified the May 1, 2002 protective order to allow the Independent System Operator to have access to confidential information other than pricing information. The ruling also revised the scope of material that should be considered confidential.

In a January 14, 2004 ALJ ruling in R.01-10-024, the May 20, 2003 modified protective order was amended again.<sup>2</sup> Among other changes, the Amended Protective Order allows attorneys and/or outside experts, who are not competitive duty personnel for their clients, to gain access to protected materials.

The Amended Protective Order reflects the tension between “open and transparent procurement processes” and the need “to protect legitimate confidential, proprietary, commercially sensitive and trade secret information of companies participating in RFPs.” (R.01-10-024, December 1, 2003 Ruling, pp. 7-8.) The Amended Protective Order reflects what an ALJ with the Federal Energy Regulatory Commission (FERC) did in one of the FERC proceedings which addressed the fall-out from the California energy crisis of 2000-2001. The FERC ALJ accommodated these competing interests by allowing “attorneys and outside experts retained by any participant to the proceeding ... the opportunity to review Protected Materials so long as they executed Non-Disclosure Certificates and were not ‘Competitive Duty Personnel.’” (R.01-10-024, December 1, 2003 Ruling, p. 10.)

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protective order on April 14, 2003. In the May 20, 2003 ruling in R.01-10-024, the modified protective order was adopted.

<sup>2</sup> See R.01-10-024, ALJ Rulings dated December 1, 2003, and January 14, 2004.

Recently, in D.04-01-050, the decision in the procurement rulemaking proceeding, the Commission addressed the subject of confidentiality and the need for meaningful public participation. The Commission stated:

“Since issuance of the April 4 [2003] Ruling, parties have continued to voice concern over the amount of information that is shielded from public review. We also recognize that the Legislature, particularly the Senate Energy, Utilities and Communications Committee, has taken a strong interest in this subject and has pressed this Commission to expand the amount of utility resource planning and procurement data that is made publicly available, and to ensure that the public has meaningful access to the Commission’s decision-making. In light of this ongoing concern and in an effort to promote the widest possible dialogue on utility planning matters in California, we will again revisit our approach to the treatment of confidential information in our new Procurement OIR. Our intent is to broaden the scope of information embedded in utility resource plans that can be made public.” (D.04-01-050, p. 178.)

The Commission went on to state:

“We are frustrated with our experience from last year over the amount of information that has been redacted in utility filings seeking preapproval of certain procurement transactions. The breadth of the redactions we see in utility filings is incompatible with open decision-making. While there may be at times an inherent tension between open decision-making and the protection of confidential information, it is possible to balance these competing goals in the public interest. During the Commission’s consideration of procurement issues both in this Docket and in related advice letter filings over the past year, some believe we have tilted this balance more toward the ‘protection of confidential information’ than is required by the public interest. Indeed, based on this experience, we consider the current point on the continuum between these competing goals to have become unworkable, and are resolved to move much closer to the ‘open decision-making’ end of the continuum.” (D.04-01-050, pp. 179-180.)

PG&E's proposed protective order has been compared to the various protective orders issued in R.01-10-024. Although PG&E's proposed protective order is substantially the same as the original May 1, 2002 protective order issued in R.01-10-024, the protective order in that proceeding has changed over time. As a result, PG&E's proposed protective order is more restrictive than what is currently being used in R.01-10-024.

Currently, the Amended Protective Order in R.01-10-024 allows an attorney and an expert or employee of an expert, who is retained by a market participating party, and who is not engaged in, or does not provide legal or expert consulting services on the purchase, sale, or marketing of energy or capacity, or the bidding on or purchasing of power plants or consulting on such matters, to have access to protected materials after executing a non-disclosure certificate. PG&E's proposed protective order in this proceeding should be changed to reflect the same kind of access that was granted to certain persons retained by a market participating party in R.01-10-024. Accordingly, changes have been made to numbered paragraphs 3.h., 4, 6, 9, 11, 12, 14, 15, 18, 22, and 23 of PG&E's proposed protective order.<sup>3</sup> The revisions to PG&E's proposed protective order are reflected in the protective order that is attached to this ruling as Attachment A.

PG&E's motion for a protective order, as changed by the revisions contained in Attachment A, is granted. The revised protective order, Attachment A, is adopted as the protective order that shall apply in this proceeding.

**IT IS RULED** that:

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<sup>3</sup> Minor changes have also been made to numbered paragraphs 1, 3, 8, 13, 20, and 26.



1. The August 1, 2003 and February 17, 2004 motions of Pacific Gas and Electric Company (PG&E) for authority to file and maintain confidential, commercially sensitive, proprietary information under seal is granted.

- a. The unredacted testimony, which was submitted on August 1, 2003, in support of PG&E's 2004 ERRA and the review of its procurement activities from January 1, 2003, through May 31, 2003, shall remain sealed.
- b. The unredacted updated testimony, which was submitted on February 17, 2004, in support of PG&E's 2004 ERRA as amended, shall remain sealed.

2. The August 1, 2003 motion of PG&E for a protective order, as changed by the revisions which are reflected in Attachment A of this ruling, is granted.

3. Attachment A of this ruling is adopted as the protective order that shall apply to this proceeding.

Dated February 19, 2004, at San Francisco, California.

/s/ JOHN S. WONG  
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John S. Wong  
Administrative Law Judge

**ATTACHMENT A**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Adoption of its 2004 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement, for Review of Contract Administration, Least Cost Dispatch and Procurement Activities during the Record Period January 1, 2003, Through May 31, 2003, and for Approval of its 2004 Ongoing Competition Transition Charges (CTC) Revenue Requirement and Proposed Rate Design.

Application 03-08-004

(U 39 E)

**PROTECTIVE ORDER REGARDING  
PACIFIC GAS AND ELECTRIC COMPANY'S  
CONFIDENTIAL PROCUREMENT INFORMATION,  
PROPRIETARY COMPUTER PROGRAMS,  
AND RELATED INFORMATION**

1. This Protective Order shall govern access to and the use of all PG&E Protected Materials and Protected Computer Program Materials in this proceeding as hereinafter defined. Notwithstanding any order terminating this docket, this Protective Order shall remain in effect until, after notice and a reasonable opportunity to be heard, it is specifically modified or terminated by the Assigned Commissioner, the Assigned Administrative Law Judge ("Assigned ALJ"), the Law and Motion Judge ("Law and Motion ALJ") or the California Public Utilities Commission ("CPUC" or "Commission"). This Protective Order does not address the right of employees of the Commission acting in their official capacities to view Protected Materials, because Commission employees are entitled to view such protected materials in accordance with the requirements of Section 583 of the Public Utilities Code and the Commission's General Order 66-C and, as applicable, Section 454.5(g) of the Public Utilities Code.

2. Under D.02-10-062's establishment of the Energy Resource Recovery Account ("ERRA") mechanism and application schedule, this proceeding will be devoted to a

review of PG&E's 2004 energy procurement forecast and PG&E's contract administration, least cost dispatch and market transactions during the period January 1, 2003 through May 31, 2003. The amount of data that is confidential or proprietary may differ from time to time. If disagreements arise over whether information should be subject to the protections of the Protective Order, the parties are to work cooperatively with the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner or the full Commission, as the case may be, to devise and implement resolution of the differences, and such modifications as may be necessary to the Protective Order in as timely a manner as possible.

3. Definitions. The terms in this Protective Order shall have a meaning consistent with the ideas set forth in Appendix A hereto, entitled "Procurement Planning and Forecasts." The term "Procurement Plan" means the type of plan for evaluating, identifying and purchasing energy and/or capacity, managing long positions, dispatching resources, procurement of generation fuels, obtaining or managing gas transportation or storage, hedging activities, administering and dispatching Department of Water Resources long-term contracts set forth in Appendix A.

- a. The term "redacted" refers to situations in which confidential, commercially sensitive or proprietary information in a document, whether the document is in paper or electronic form, has been covered, masked or blocked out. Thus, the "redacted version" of a document is one in which the document is complete except that the confidential, commercially sensitive or proprietary information contained therein is not visible because it has been covered, masked or blocked out. The term "unredacted" refers to situations in which confidential or proprietary information in a document, whether in paper or electronic form, has not been covered, masked or blocked out. Thus, the "unredacted version" of a document is one in which the document is complete, and the confidential or proprietary information contained therein is visible.

- b. The term “Protected Materials” means the confidential or proprietary information contained in the unredacted version, and not contained in the redacted version, of any of the following: (i) any testimony provided in this proceeding, (ii) any workpapers provided in this proceeding, (iii) any data request or data response provided in this proceeding, (iv) any pleading provided in this proceeding, (v) any document provided in this proceeding.
- c. Protected Material shall also include (i) any information contained in or obtained from the unredacted materials described in the preceding paragraph, (ii) any other materials that are made subject to this Protective Order by any Assigned ALJ, Law and Motion ALJ, or Assigned Commissioner, or by the CPUC or any court or other body having appropriate authority, (iii) notes of Protected Materials, and (iv) copies of Protected Materials. All parties, including Commission Staff, when creating any Protected Materials, shall physically mark such materials on each page (or in the case of materials such as computer diskettes, on each item) as “PROTECTED MATERIALS” or words of similar import as long as one or more of the terms “Protected Materials,” “Section 583,” “Section 454.5(g),” or “General Order 66-C” is included in the designation to indicate that the materials in question are Protected Materials.
- d. The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including information in electronic form) that copies or discloses materials described in Paragraph 3(b). Except as specifically provided otherwise in this Order, notes of Protected Materials are subject to the same restrictions as are Protected Materials.
- e. Protected Materials shall not include (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court, unless such information or document has been

determined to be protected by such agency or court, or (ii) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order or the Amended Protective Order in R.01-10-024.

- f. The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto as Appendix B by which persons who have been granted access to the Protected Materials of PG&E shall, as a condition of such access, certify their understanding that such access is provided pursuant to the terms and restrictions of this Protective Order, and that such persons have read such Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be sent to and retained by PG&E.
- g. The term Non-Market Participating Party (“NMPP”) Reviewing Representative shall mean a person who is
  - 1) An employee of: (A) a state governmental agency that (I) is not a Market Participating Party as defined in Paragraph 3(h)(1) hereof, and (II) is statutorily authorized to obtain access to confidential data held by another state governmental agency upon execution of a written agreement to treat the data so obtained as confidential, as provided in Government Code Section 6254.5(e); or (B) any other consumer or customer group that PG&E and the Director of the Commission’s Energy Division or his designee (“Division Director”) agree has a bona fide interest in participating on behalf of end-use customers in PG&E regulatory proceedings on ratemaking and electric procurement by PG&E, and which group is not a Market Participating Party as defined in paragraph 3(h)(1); or

- 2) An attorney, paralegal, expert or employee of an expert retained by a NMPP for the purpose of advising, preparing for or participating in the proceeding in this docket.
- 3) NMPPs shall identify their proposed Reviewing Representatives to PG&E and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. PG&E shall advise the proposed party in writing within 7 business days from receipt of the notice if it objects to the proposed Reviewing Representative, setting forth in detail the reasons therefore. In the event of such objection, the proposing party, PG&E and the Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as a NMPP Reviewing Representative. Persons who have represented members of PG&E Procurement Review Group in PRG meetings prior to February 3, 2003, and continue to represent members of the PRG, may initially qualify as

NMPP Reviewing Representatives based on their prior participation on PG&E's PRG, provided the individual executes the required nondisclosure documents in this proceeding as required by Paragraph 11 hereof.

- h. The term Market Participating Party ("MPP") Reviewing Representative shall mean a person who is engaged or retained to advise, prepare for, or participate in PG&E's A.03-08-004 proceeding and is:
  - 1) An employee of a private, municipal, state or federal entity that engages in the purchase, sale or marketing of energy or capacity, or the bidding on or purchasing of power plants, or the bidding on or purchase of electric transmission resources, or the purchase, sale or marketing of natural gas, or the bidding on or purchase of natural gas transportation or storage, or hedging activities, or consulting on one or more of the foregoing matters, or an employee of a trade association comprised of such entities that engage in one or more of such activities, who is not engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting); or
  - 2) An attorney, paralegal, expert or employee of an expert retained by an MPP, who is not himself or herself engaged in, or who does not provide legal or expert consulting services on either (1) the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or (2) the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting).

- 3) MPPs shall identify their proposed Reviewing Representatives to PG&E and Division Director and provide a curriculum vitae of the candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. PG&E shall advise the proposed party in writing within 7 business days from receipt of the notice if it objects to the proposed Reviewing Representative, setting forth in detail the reasons therefore. In the event of such objection, the proposing party, PG&E and Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the assigned ALJ or the Law and Motion ALJ. In addition to determining whether the proposed Reviewing Representative has a need to know, the ALJ in ruling on the issue will evaluate whether the candidate is engaged in the purchase, sale or marketing of energy or capacity (or the direct supervision of any employee(s) whose duties include such activities), or the bidding on or purchasing of power plants or consulting on such matters (or the direct supervision of any employee(s) whose duties include such bidding, purchasing or consulting). Absent unusual circumstances as determined by the ALJ, a candidate who falls within the criteria set forth in the preceding sentence will ordinarily be deemed ineligible to serve as an MPP Reviewing Representative;
- i. The term "Protected Computer Program Materials" shall mean the confidential and proprietary trade secret information, including without limitation databases, models, programs, software, algorithms, input sets, documentation (including any users' manuals, users' guides, training materials, and other materials for use in conjunction with running the models or program), and other materials, including any documents prepared by



PG&E that reproduce, in whole or in part, those models, programs, software, algorithms, input sets, and documentation, that are (i) subject to protections for such information in the licensing agreement with third party owners of the confidential and proprietary trade secret information; or (ii) entitled to protection as confidential and proprietary trade secret information, including without limitation databases, models, programs, software, algorithms, input sets, documentation (including any users' manuals, users' guides, training materials, and other materials for use in conjunction with running the models or program), and other materials, including any documents prepared by PG&E that reproduce, in whole or in part, those models, programs, software, algorithms, input sets, and documentation, that are owned by PG&E as a result of PG&E developing, directly or indirectly, in whole or in part, the confidential and proprietary trade secret information.

- j. The term "Computer Non-Disclosure Certificate" shall mean the certificate (i) annexed hereto as Appendix C by which parties certify their understanding that access to PG&E Protected Computer Program Material is provided pursuant to the terms and restrictions of this Protective Order, and that such persons have read such Protective Order and agree to be bound by it, or (ii) established for a nondisclosure agreement that is developed for Protected Computer Program Material subject to a third party licensing agreement pursuant to Paragraph 22 below. All Computer Non-Disclosure Certificates shall be sent to and retained by PG&E.

4. Access of NMPP and MPP Reviewing Representatives to Protected Materials shall be granted only pursuant to the terms of this Protective Order. Access of MPP Reviewing Representatives to Protected Materials shall only be to Protected Materials marked as such in this proceeding. All other participants in this proceeding shall not be

granted access to Protected Material, but shall instead be limited to reviewing redacted versions of documents that contain Protected Material.

5. Whenever PG&E submits a document in this proceeding that includes data that PG&E contends is confidential or proprietary, PG&E shall also prepare a redacted version of such document. The redacted version shall be sufficiently detailed in organization so that persons familiar with this proceeding can determine with reasonable certainty the nature (but not the magnitude) of the data that has been redacted. The redacted version of any document required by this paragraph shall be served on all parties on the service list (or, in the case of discovery, on all persons entitled to the discovery responses) who are not entitled to obtain access to Protected Material hereunder. All disputes regarding redacted versions of documents shall be submitted for resolution to the CPUC in accordance with Paragraph 13 of this Protective Order.

6. Within thirty (30) days after (a) the issuance of final Commission decision approving the ERRRA revenue requirement in this proceeding, or (b) the date on which the final Commission decision is no longer subject to judicial review, a NMPP Reviewing Representative and MPP Reviewing Representative shall, if requested to do so in writing by PG&E, return or destroy the Protected Materials. Within the same 30-day period, the NMPP and MPP Reviewing Representatives shall also submit to PG&E and Commission Staff an affidavit stating that, to the best of the NMPP and MPP Reviewing Representatives' knowledge, all Protected Materials subject to the request have been returned or destroyed. Notwithstanding the two preceding sentences, the NMPP and MPP Reviewing Representatives may retain Notes of Protected Materials and copies of filings, official transcripts and exhibits, if any, prepared in the course of the NMPP and MPP Reviewing Representatives' review of the Protected Materials, provided that such retained materials are maintained in accordance with Paragraphs 9 and 12 below. To the extent that Protected Materials are not returned or destroyed pursuant to this paragraph,

they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and CPUC General Order 66-C.

7. In the event the CPUC receives a request for a copy of or access to Protected Material from a state governmental agency that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, after giving written notice to PG&E of the request, release such Protected Material to the requesting government agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions as, and is substantively identical to, the draft agreement set forth in Appendix B; i.e., identical as to legal principles but with variations in language that are necessary due to the particular situation of the requesting agency.

8. If a request is made pursuant to the Public Records Act (“PRA”), Government Code Section 6250, *et seq.*, that Protected Material filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify PG&E of the PRA request and will notify the requester that the Protected Materials are public records that fall within the exclusions listed in Section 2 of General Order 66(c), and/or that there is a public interest served by withholding the record. *See* paragraphs 2.2 and 3.3 of General Order 66-C. In the event the CPUC receives a request from a federal governmental agency or via a judicial subpoena for the production of Protected Materials in the CPUC’s possession, the CPUC will also notify PG&E promptly of such request. In the event that a PRA requester brings suit to compel disclosure of Protected Materials, the CPUC will promptly notify PG&E of such suit, and Commission Staff and PG&E shall cooperate in opposing the suit.

9. Protected Materials shall be treated as confidential by each NMPP and MPP Reviewing Representative in accordance with the certificate executed pursuant to Paragraphs 3(f) and 11 hereof. Protected Materials shall not be used except as necessary

for the conduct of this proceeding, and shall not be disclosed in any manner to any person except (i) other NMPP and MPP Reviewing Representatives who are engaged in this proceeding and need to know the information in order to carry out their responsibilities, and (ii) persons employed by or working on behalf of other state governmental agencies covered by Paragraph 7. In the event that a NMPP not covered by Paragraph 7, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any confidential information, the NMPP or MPP agrees to oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective Order lawfully issued by the Commission and therefore may not be disclosed. The MPP or NMPP shall also immediately inform the utility of the request, and the utility may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the NMPP or MPP shall cooperate with the utility to the maximum extent practicable to either oppose the disclosure of the Protected Materials consistent with applicable law, or obtain confidential treatment of Protected Materials by the entity that wishes to receive the Protected Materials prior to any such disclosure. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where the NMPP or MPP has been ordered to produce certain specific Protected Materials, the MPP or NMPP may, upon request for substantially similar Protected Materials by a similarly situated party, respond in a manner consistent with that order to those substantially similar requests for those Protected Materials.

10. It shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs Protected Material in a manner that could reveal all or a part of the Protected Material shall also be considered Protected Material that is subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this Protective Order. It shall also be a rebuttable presumption that where the inputs to studies

or models include Protected Material, or where the outputs of such studies or models reveal such inputs or can be processed to reveal the Protected Material, such inputs and/or outputs shall be considered Protected Material subject to this Protective Order, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of PG&E. Unless a party, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon Protected Material shall label the model or study “Protected Material,” and it shall be subject to the terms of this Protective Order.

11. No NMPP or MPP Reviewing Representative shall be permitted to inspect, participate in discussions regarding, or otherwise be granted access to Protected Materials pursuant to this Protective Order unless such NMPP or MPP Reviewing Representative has first executed a Non-Disclosure Certificate and delivered it to PG&E. PG&E shall provide copies of executed Non-Disclosure Certificates to Commission Staff. Attorneys qualified as NMPP or MPP Reviewing Representatives shall ensure that persons under their supervision or control comply with this Protective Order.

12. In the event that a NMPP or MPP Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in this proceeding, or an NMPP Reviewing Representative is employed or retained for a position whose employer is not qualified to be an NMPP under Paragraph 3(g)(1), then access to Protected Materials by that person shall be terminated. Even if no longer engaged in such reviews, every such person shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

13. All disputes arising under this Protective Order shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such dispute to the applicable ALJ, the parties to the dispute shall use their best efforts to

resolve it. Neither PG&E nor the Commission Staff waives its right to seek additional administrative or judicial remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the dispute.

14. All documents containing Protected Materials that are filed with the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed or served under seal pursuant to this Protective Order. Such documents shall be marked with the words "Protected Materials" or one of the other, similar terms set forth in Paragraph 3(c) hereof, and shall be served upon all NMPP and MPP Reviewing Representatives and persons employed by or working on behalf of the state governmental agencies referred to in Paragraph 7 who are eligible to see the Protected Materials. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail in accordance with electronic service protocols established for this docket, (b) by facsimile, (c) by U.S. postal mail, (d) by overnight mail, or (e) by messenger service. In the event the serving party chooses to serve the foregoing persons entitled to see Protective Materials by U.S. postal mail, overnight mail, or messenger service, the serving party shall give all parties 24 hours' electronic notice of its intention to do so. Any affected party who objects on account of delay to being served with the document(s) at issue by U.S. postal mail, overnight mail or messenger service shall promptly notify the serving party of such objection, and in such a case the serving party shall arrange to have the document(s) containing the Protected Material hand-delivered on the date service is due to the party so objecting. Whenever service of a document containing Protected Material is made by U.S. postal mail, overnight mail or messenger service, the Assigned ALJ shall be served with such document by hand on the date that service is due.

15. Nothing in this Protective Order shall be construed as limiting the right of PG&E, Commission Staff, a NMPP, a MPP or a state governmental agency covered by

Paragraph 7 from objecting to the use of Protected Material on any legal ground, such as relevance or privilege.

16. All Protected Materials filed with judicial or administrative bodies other than the Commission, whether in support of or as a part of a motion, brief or other document or pleading, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials that are subject to this Protective Order.

17. Neither PG&E nor the Commission Staff waives its right to pursue any other legal or equitable remedy that may be available in the event of actual or anticipated disclosure of Protected Materials.

18. PG&E and Commission Staff may agree at any time to remove the “Protected Material” designation from any material if, in their mutual opinion, its confidentiality is no longer required; provided that PG&E and Commission staff may not change the confidential status of Protected Computer Program Materials. PG&E will notify all parties that PG&E believes are in possession of such materials of the change of designation.

19. Protected Computer Program Material include, without limitation, the following computer databases, models, programs and input data sets owned by the entities indicated: (i) Economic/Demographic Forecasting Models and Data, owned by DRI/WEFA, Economy.com, and Quantitative Micro Software; (ii) Qualifying Facilities Forecasting System owned by PG&E; (iii) Gen Trader, owned by Power Cost, Inc. These databases, programs, software, computer models, and data sets and certain elements of each contain or constitute confidential and proprietary trade secret information. With respect to the computer models, the Protected Computer Program Material includes the computer models’ databases, software, algorithms, and documentation (including any users’ manuals, manuals, users’ guides, training material and other material for use in connection with running the models or programs) and any

documents prepared by PG&E which reproduce, in whole or in part, these models' databases, software, algorithms, and documentation.

20. In addition to Public Utilities Code Section 583 and General Order 66-C, California Public Utilities Code Sections 585 and 1822 and Article 17.1 of the Commission's Rules of Practice and Procedure provide for safeguards to protect databases and the computer models and provide for protection of proprietary information.

21. PG&E shall provide to parties, on their request, information describing the operation of protected models, databases, programs and data sets, but PG&E is not required to provide that information in a manner that enables parties to operate the models or programs or manipulate the databases. For purposes of this proceeding, PG&E will perform or have performed runs as may be reasonably requested by parties who do not themselves have licenses of the proprietary information owned by others.

22. Parties may only obtain access to Protected Computer Program Material that contains or constitutes confidential and proprietary trade secret information owned by a third party to the extent allowed under the licensing agreement between the third party and PG&E for the computer program. Access to Protected Computer Program Material under this paragraph is subject to execution of a nondisclosure agreement and certificate by the party and its representative(s) that satisfies the licensing agreement between the third party and PG&E for the computer program.

23. Parties may only obtain access to Protected Computer Program Material that contains or constitutes confidential and proprietary trade secret information owned by PG&E after executing a nondisclosure agreement and certificate attached as Appendix C.

24. No person requesting and receiving any Protected Computer Program Material shall copy or reproduce it, or cause to be copied or reproduced any portion of the Protected Computer Program Material in any manner. No person requesting and receiving the Protected Computer Program Material shall disclose or use such information or notes, workpapers, or work product derived from same, except for the



purpose of participating in this proceeding, unless otherwise authorized in writing by PG&E for its Protected Computer Program Material, or by the third party owners for their Protected Computer Program Material.

25. No person requesting and receiving any of the Protected Computer Program Material shall disclose it, or notes, workpapers, or work product derived from same to any other person (such as to consultants, expert witnesses, or attorneys) except for purposes of this proceeding, and any such persons shall be informed of this protective order and agree in writing to be bound by it before receiving such information.

26. Any party who engages a consultant shall be responsible for the acts of such consultant or employee of the consultant and shall be further required to provide a duplicate signed Appendix C to the Assigned ALJ for each consultant and employee given access to Protected Computer Program Materials. The ALJ shall retain as confidential from PG&E and other parties the name of any such consultant or employee of the consultant. Upon the close of the record in this proceeding, the ALJ shall be relieved of his or her obligation to retain the confidentiality of the identity of the consultant or employee of the consultant allowed access to proprietary information, and such identity may become a matter of public record. At the close of the record, a party shall be obligated, at the request of PG&E, to disclose to PG&E the names of all consultants, or employees of consultants who have obtained access to the Protected Computer Program Materials.

27. Any portion of the prepared testimony, workpapers, submissions or pleadings in this application which discloses any of the Protected Computer Program Materials shall be served only upon parties who have signed Exhibit C or other appropriate nondisclosure agreement and certificate under Paragraph 22 as described above, and any such material filed with the Commission shall be tendered in a sealed envelope stating on the outside that it is sealed pursuant to this protective order. Any such prepared testimony or pleading shall include a legend that reads as follows:

WARNING: THIS DOCUMENT OR MATTER CONTAINED IN IT IS CONFIDENTIAL AND ITS USE IS RESTRICTED IN ACCORDANCE WITH A FEBRUARY 19, 2004 PROTECTIVE ORDER OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION IN APPLICATION NO. 03-08-004. THE VIEWING, DISSEMINATION, RECORDING, OR COPYING OF THIS DOCUMENT, EXCEPT AS AUTHORIZED BY THE PROTECTIVE ORDER, IS A VIOLATION OF AN ORDER OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION. IT IS A VIOLATION OF THE PROTECTIVE ORDER TO SEPARATE THIS PAGE FROM THE DOCUMENT TO WHICH IT IS AFFIXED.

Service upon the persons specified in this paragraph may either be (a) by electronic mail in accordance with electronic service protocols established for this docket, (b) by facsimile, (c) by U.S. postal mail, (d) by overnight mail, or (e) by messenger service.

28. Within 30 days of the date that the final order of the Commission in this proceeding is no longer subject to judicial review, all parties, including the Commission and any Commission employees, shall return to PG&E the Protected Computer Program Materials, except that a party may destroy any notes or other materials not returned and shall, within the 30-day period, certify to PG&E and any third party owners that the same have been destroyed.

29. The owners of any third party Protected Computer Program Materials are hereby made parties to this proceeding with the right to enforce this order. Nothing in this section shall be deemed to limit their rights or remedies otherwise available under the law. The obligations pertaining to confidentiality of the proprietary information shall survive the termination of this proceeding.

30. The provisions of Paragraphs 13, 15, 16, and 17 of this Protective Order concerning resolution of disputes, objections, filings with other bodies, and remedies for disclosure shall apply to Protected Computer Program Material and to all parties with respect to Protected Computer Program Material.

Dated February 19, 2004

/s/ JOHN S. WONG  
John S. Wong  
Administrative Law Judge

## **APPENDIX A**

### **PROCUREMENT PLANNING AND FORECASTS**

Procurement planning and forecasts are reflected in the ERRA filing and the ERRA revenue requirement request in this proceeding. The major elements of the procurement plan and forecasts that give rise to Protected Materials and that involve Protected Computer Materials are described in this Appendix.

**Identification of PG&E's forecast range of residual net short requirements and long positions.** This area identifies the forecast ranges of PG&E's residual net-short and long positions by various time periods over the test period. The analysis begins by identifying customer electricity demands that reflects the impacts of demand-side management, direct access, and self-generation. The next step consists of identifying the likely ranges of previously committed supply resources including the levels of production from URG, DWR long-term contracts, purchase power agreements, qualifying facilities, without limitation.

**Identification of Available Potential Options and Assessment of Risks and Alternative Portfolio Diversification Strategies.** This activity identifies a flexible range of products for filling a diversified portfolio of resources to meet the residual net-short requirements and to manage the long positions. It also identifies the manner in which risks are to be assessed and taken into account in making procurement decisions.

**Procurement Methods and Transaction Standards** to be followed for the various types of products to be procured. This identifies the types of procurement procedures to be conducted for each product.

**Identification of the Scope of Applicability of the Procurement Forecasts.** This process identifies the range of basic assumptions over which the forecast can be expected to function reasonably well. It will identify certain pre-approved trigger values in the range of these parameters that would automatically trigger the emergency filing of a revised procurement plan or emergency ERRA trigger filing.

**APPENDIX B**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Adoption of its 2004 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement, for Review of Contract Administration, Least Cost Dispatch and Procurement Activities during the Record Period January 1, 2003, Through May 31, 2003, and for Approval of its 2004 Ongoing Competition Transition Charges (CTC) Revenue Requirement and Proposed Rate Design.

(U 39 E)

Application 03-08-004

**NON-DISCLOSURE CERTIFICATE**

I, \_\_\_\_\_, have been asked by \_\_\_\_\_ to inspect certain materials that have been designated as "Protected Materials" under Paragraph \_\_\_\_ of the Protective Order entered in the above-captioned matter on February 19, 2004 (the "Order").

1. I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Order in this proceeding, that I have been given a copy of and have read the Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

2. I understand that my review of Protected Materials is solely for the purpose of participating in the above-captioned matter, and that any other use or disclosure of Protected Materials by me is a violation of the Order.

3. I hereby agree to submit to the exclusive jurisdiction of the California Public Utilities Commission for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the Order.

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Representing: \_\_\_\_\_

Employer: \_\_\_\_\_

Position: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX C**

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Adoption of its 2004 Energy Resource Recovery Account (ERRA) Forecast Revenue Requirement, for Review of Contract Administration, Least Cost Dispatch and Procurement Activities during the Record Period January 1, 2003, Through May 31, 2003, and for Approval of its 2004 Ongoing Competition Transition Charges (CTC) Revenue Requirement and Proposed Rate Design.

(U 39 E)

Application 03-08-004

**AGREEMENT TO BE BOUND BY RULE 74.7 PROTECTIVE ORDER**

I certify my understanding that (1) my access to PG&E Protected Computer Program Materials, as provided in the protective order in Application No. 03-08-004, is provided to me pursuant to the terms and restrictions of that protective order, and (2) I have been given a copy of, and have read, that protective order and agree to be bound by it. I understand the PG&E Protected Computer Program Materials, or any notes, documents, memoranda containing such PG&E Protected Computer Program Materials, (a) shall not be disclosed to anyone other than in accordance with that protective order, and (b) shall and may be used only for the purposes of the proceeding in Application No. 03-08-004. I agree that my obligation to honor the confidentiality of PG&E Protected Computer Program Materials shall continue after the issuance of a final, non-appealable order disposing of the merits of Application No. 03-08-004. I acknowledge that a

violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Representing: \_\_\_\_\_

Employer: \_\_\_\_\_

Position: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

Business Phone: \_\_\_\_\_

Date: \_\_\_\_\_

**(END OF ATTACHMENT A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motions for Protective Order and to File Under Seal on all parties of record in this proceeding or their attorneys of record.

Dated February 19, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.